IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

WP(C).No. 9747 of 2004(I)

PETITIONER:

R.S.GEENA, HIGH SCHOOL ASSISTANT (HINDI)
K.P.M.HIGH SCHOOL, KRISHNAPURAM, VALIYARATHALA,
OORUTTAMBALAM P.O. THIRUVANANTHAPURAM DIST.

BY ADV. SRI.PIRAPPANCODE V.SREEDHARAN NAIR

RESPONDENTS:
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1. STATE OF KERALA, REP. BY ITS
CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
KERALA, THIRUVANANTHAPURAM.

3. R.P.REENA, UPPER PRIMARY SCHOOL
ASSISTANT, KRISHNAPURAM, VALITHARALA,
OORUTTAMBALAM P.O. THIRUVANANTHAPURAM.

4. THE DISTRICT EDUCATIONAL OFFICER,
NEYYATTINKARA.

5. THE MANAGER, K.P.M.HIGH SCHOOL,
KRISHNAPURAM, VALIYATHALA, OORUTTAMBALAM P.O.
THIRUVANANTHAPURAM DISTRICT.

BY GOVERNMENT PLEADER SRI. A.J. VARGHESE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K. BASHEER, J.

W.P.(C). NO. 9747 OF 2004

Dated this the 27th day of July, 2007

J U D G M E N T

Petitioner challenges Ext.P7 order passed by respondent No.2 revoking the order of approval of her appointment granted by the controlling officer.

2. The short question that arises for consideration is whether petitioner's claim under Rule 51 A is superior to the claim of respondent No.3 for promotion under Rule 43B of Chapter XIV A KER.

3. Petitioner was initially appointed as H.S.A (Hindi) in a short term leave vacancy with effect from July 14, 2000 till September 29, 2000. On April 1, 2002 a regular vacancy of H.S.A (Hindi) arose in the School. Petitioner was appointed in the said vacancy with effect from June 5, 2002 recognising her claim under Rule 51 A Chapter XIVA KER. The controlling officer approved the appointment of petitioner with effect from the date of her appointment, as could be seen from Ext.P2.

4. It is not in dispute that respondent No.3 was appointed as an Upper Primary School Assistant in the School with effect from August 1, 2000. According to respondent No.3, she ought to have been promoted to the post of H.S.A (Hindi) under Rule 43 B of Chapter XIV A KER since she had got the requisite qualification to hold the said post. Therefore, she

challenged Ext.P2 order of approval of appointment of the petitioner before the revisional authority, who by Ext.P7 order reversed the order of the controlling officer and held that respondent No.3 was entitled to get promotion as H.S.A (Hindi). Petitioner has challenged the said order in this writ petition.

5. It is not disputed by respondent No.3 that petitioner was a Rule 51 A claimant at the time when the vacancy of has (Hindi) arose. However, it is the case of respondent No.3 that her claim under Rule 43 B Chapter XIV A KER would prevail over the claim made by the petitioner under Rule 51 A. The revisional authority accepted the above contention and held that respondent No.3 ought to have been promoted as H.S.A.

6. But it is contended by learned counsel for the petitioner that respondent No.3 was not entitled to be appointed as H.S.A (Hindi) at all since she did not possess the requisite qualification under Rule 2 Chapter XXXI KER. Admittedly respondent No.3 has got to her credit Sahityacharya from Kerala Hindi Prachara Sabha. Sahityacharya is the academic qualification while Acharya is the training qualification. It is also not in dispute that respondent No.3 has passed Pre-degree and T.T.C Examinations. On the contrary, petitioner is a Post Graduate in Hindi. She has also got to her credit Sahityacharya from Kerala Hindi Prachar Sabha and Diploma in Hindi Teaching conducted by the Department of Education, Government of Kerala.

7. It is contended by learned counsel for the petitioner that she is fully qualified to hold the post of High School Assistant whereas respondent No.3 is not. Rule 2 (2) (IV) of Chapter XXXI KER deals with the qualification of High School Assistant (Hindi). Clause IV with the Explanation incorporated thereunder are extracted hereunder:

(iv) High School Assistant (Hindi)

The candidate shall possess any one of the academic qualifications and a training qualification as specified below:

A. ACADEMIC QUALIFICATION

A degree in Hindi conferred or recognised by the Universities in Kerala; or

A title of oriental learning in Hindi awarded or recognised by the Universities in Kerala; or

Praveen of the Dakshina Bharat Hindi Prachar Sabha, Madras with a pass in the S.S.L.C Examination conducted by the Commissioner for Govt. Examinations, Kerala, or its equivalent ; or

Sahityacharya of Kerala Hindi Prachar Sabha with a pass in S.S.L.C Examination conducted by the Commissioner for Govt. Examinations, Kerala or its equivalent.

B. TRAINING QUALIFICATIONS

B.Ed/B.T/L.T. Conferred or recognised by the universities in kerala or Diploma or Certificate of Language Teachers' Training in Hindi issued by the Commissioner for Govt. Examinations, Kerala; or

Diploma in Hindi Teachers Training issued by the Commissioner for Govt. Examinations, Kerala; or

A pass in any one of the following examinations of the Kendriya Hindi Sikshan Mandal Agra namely;

(i) Hindi Siksha Praveen;
(ii) Hindi Sikshan Parangath
(iii) Hindi Sikshan Nishnat.

Explanation I:- Persons who have successfully undergone Pracharak Diploma of Dakshina Bharat Hindi Prachar Sabha up to and including the academic year 1969-70 shall be considered to possess the requisite training qualification.

Explanation II:- Persons who have successfully undergone the course in Hindi Teachers Diploma Course of the Regional Hindi Training College, Gandhigram, Madurai during the academic year 1967-68 or prior to that year shall be considered to possess the requisite training qualifications.

Explanation III:- Persons who have successfully undergone the [Acharya course of the Kerala Hindi Prachar Sabha] up to and including the academic year 1969-70 shall be considered to possess the requisite training qualification.

8. A perusal of the above provisions and particularly Explanation III shows that there is considerable force in the contention raised by the petitioner. Admittedly respondent No.3 had passed Sahityacharya and Acharya examinations only in the year 1997. Explanation III postulates that persons who have successfully undergone the Acharya course of the Kerala Hindi Prachar Sabha up to and including the academic year 1969-70 shall be considered to possess the requisite training qualification. Therefore, it cannot be said that respondent No.3 is qualified to hold the post of High School Assistant (Hindi). In that view of the matter Ext.P7 order passed by respondent No.2 cannot be sustained. Accordingly

Ext.P7 is quashed. Ext.P2 order is restored.

The writ petition is allowed. The controlling officer shall ensure that arrears of salary and allowances payable to the petitioner are disbursed to her, within two months from the date of receipt of a copy of this judgment.

On the contrary, petitioner is admittedly having the requisite qualifications.

A.K. BASHEER, JUDGE

vps

A.K. BASHEER, JUDGE

OP NO.20954/00

JUDGMENT

1ST MARCH, 2007